IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1468 of 2003
To
FIRST APPEAL No.1491 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL.LAQ OFFICER - Appellant
Versus
JASMATBHAI MOTIBHAI & ORS. - Respondents

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Appearance :
MR SS SHAH, GP for Appellant in FA Nos.1468 to 1479 of 2003
MS KRINA P CALLA, AGP for Appellant in FA Nos.1480 to 1491 of 2003
MR MD VAKIL for original claimants.
None for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 03/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of the common judgment and award dated December 27, 2001 rendered by the learned 2nd Joint Civil Judge (S.D.), Surendranagar, in Land Reference Case Nos.224 of 1996 to 247 of 1996 by which the claimants have been awarded additional compensation at the rate of Rs.8.30 paise per square metre for their acquired lands over and above the offer of compensation made to them at the rate of Rs.1.04 paise per square metre by the Special Land Acquisition Officer *vide* award dated April 24, 1995.

2. The Executive Engineer, Narmada Nigam Limited, Canal Division No.2/5, Limdi, made a proposal to the State Government to acquire the lands of Village: Kotharia, Taluka: Wadhvan, District: Surendranagar, for the public purpose of construction of canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of Village: Kotharia mentioned therein

were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on October 25, 1993. Thereafter, necessary inquiry under Section 5A of the Act was conducted and the Special Land Acquisition Officer had forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands of Village: Kotharia specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of canal under Narmada Project. Therefore, declaration under Section 6 of the Act was made, which was published in the official gazette on July 12, 1994. Thereafter, the interested persons were served with the notices for determination of compensation payable to them. On the basis of the materials placed before him, the Special Land Acquisition Officer, by his award dated April 24, 1995, offered compensation to the claimants at the rate of Rs.1.04 Paise per square metre. The claimants were of the opinion that the offer of compensation made to them was totally

inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for determination of just amount of compensation payable to them. Accordingly, the References were made to the District Court, Surendranagar, where they were registered as Land Reference Case Nos.224 of 1996 to 247 of 1996.

3. On behalf of the claimants, three witnesses were examined namely: (1) Kalyanbhai Makanbhai Lakum at Exhibit 17; (2) Lavjibhai Prabhubhai Dalvadi at Exhibit 55; and, (3) Ramjibhai Matrabhai Rabari at Exhibit 81. The claimants also produced copies of index of sale deeds at Exhibits 48 to 54 as well as copies of abstracts of Village Form Nos.8A and 7/12 at Exhibits 58 to 79. On behalf of the Acquiring Authorities, witness Jigneshbhai Parshottambhai was examined at Exhibit 92. The said witness produced xerox copies of sale deeds at Exhibits 87 to 91 and map of Village at Exhibit 85 for consideration of the Court.

4. On appreciation of evidence, the Reference Court came to the conclusion that the sale deeds produced by the Acquiring Authorities at Exhibits 87 to 91 were not relevant for the purpose of determining the market value of the lands acquired because (1) no iota of evidence was led to establish that the lands covered by those sale deeds were adjoining to the lands acquired in the instant cases; (2) no one was examined by the Acquiring Authorities to testify about the genuineness and/or *bona fide* of those transactions; (3) sale instances relied upon were not comparable one; and, (4) material referred to and relied upon by the Special Land Acquisition Officer should not be treated as evidence unless and until it was produced and proved before the Court. Having held so, the Reference Court proceeded to determine the market value of the lands acquired on yield basis and, ultimately, has come to the conclusion that the claimants are entitled to compensation in all at the rate of Rs.9.34 paise per square metre by the impugned award giving rise to the above numbered appeals.

5. This Court has heard Ms.Krina P. Calla, learned Assistant Government Pleader for the appellant, and Mr.M.D.Vakil, learned counsel for the claimants, at length and in great detail. This Court has also considered the Record & Proceedings of the cases received from the Reference Court.

6. The grievance made by Mr.M.D.Vakil, learned counsel for the claimants, that the Reference Court has not considered sale deeds produced by the claimants while determining the market value of the lands acquired deserves to be considered. Similarly, the grievance made by Ms.Krina P. Calla, learned Assistant Government Pleader for the appellant, that the Reference Court has proceeded to determine the market value of the lands acquired in the instant cases on yield basis without there being any documentary evidence on record also deserves to be considered. On the facts and in the circumstances of the case, this Court is of the opinion that the conclusions reached by the Reference Court are not warranted and justifiable on the evidence placed before it. This Court finds that the conclusions

reached by the Reference Court are unsustainable on settled principles of law. It is well settled that the Reference Court has to determine the market value of the lands acquired on legal, valid, reliable and acceptable relevant evidence and should not base its conclusions on feats of imagination. The learned counsels for the parties have, therefore, agreed that the impugned judgment and award of the Reference Court be set aside and the cases be remitted back to the Reference Court for a fresh decision in accordance with law.

7. In view of the defects, which are noticed by this Court in the impugned award, as well as the consensus between the learned counsels for the parties, this Court is of the opinion that the cases deserve to be remitted back to the Reference Court for a fresh decision in accordance with law. The appeals, therefore, will have to be accepted.

8. For the foregoing reasons, the judgment and award challenged under the appeals is set aside. The cases are remitted back to the Reference Court for a

fresh decision in accordance with law. As the acquisition had taken place pursuant to the notification, which was published in the official gazette on October 25, 1993, the Reference Court is directed to dispose of the References as early as possible and preferably within three months from the date of receipt of the order. The Registry is directed to transmit the R & P of the cases to the Reference Court forthwith. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra